



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 30, 1947

Hon. Bun L. Hutchinson Opinion No. V-287
County Attorney

Bowie County
Boston, Texas

Re: Authority of Levee
Improvement District
to make contribution
out of Reserve Main-
tenance Fund.

Dear Sir:

We copy from your letter of June 3, 1947, the facts and question upon which our opinion is requested:

"FACTS: The Bowie County Levee Improvement District No. 1 is a duly and legally constituted levee improvement district, and as a part of its levee improvement and drainage program has heretofore constructed a canal several miles in length within the district, which canal drains water off of approximately 14,000 acres of Red River bottom land. This canal is now, and has been at all times maintained by the district and it empties into Edwards Lake, a natural lake also located within the district, which lake empties into Red River. During the course of years the mouth of Edwards Lake has filled to such an extent that surface water at this time on the farms draining into the canal will not pass on into Red River, thereby causing the almost complete failure of drainage from the farm lands in this district.

"The levee improvement district now has on hand several thousand dollars in its maintenance fund, which it holds in reserve as against emergencies or possible breaks in the levee protecting the farm lands from overflow from Red River, and the supervisors of this district desire, if legally possible, to contribute a reasonable portion of its reserve maintenance fund to a common fund raised by private donations and otherwise, which common fund is to be used by a committee

in employing engineers to make a survey of the obstructions in the mouth of Edwards Lake, and the preparation of plans and estimates of costs of removing these obstructions, and further to be used in paying time and expenses of engineers and other representatives in going to Washington, D.C. to present the conditions herein stated to appropriate committees of Congress, seeking an appropriation to the Army engineers for the purpose of having the Army engineers remove these obstructions from the mouth of Edwards Lake.

"QUESTION: Whether or not the Board of Supervisors of Bowie County Levee Improvement District No. 1, in Bowie County, Texas, can legally contribute a portion of its maintenance funds to a common fund hereinabove described for the purposes hereinabove stated?"

Bowie County Levee Improvement District No. 1 was organized on February 10, 1913, under Articles 5530 to 5584, inclusive, Revised Civil Statutes, 1911 (Acts 1909, p. 140, Sec. 1 to 58, inc.). It is assumed that said district has availed itself of the conservation amendment to the Constitution, Article 16, Sec. 59, and the various Acts passed thereunder covering levee improvement districts, now represented by Articles 7972 to 8042, inclusive, Vernon's Civil Statutes (Acts 1925, Ch. 21, as amended). In any case, we are unable to find in the provisions of the 1909 Act or the 1925 Act authorization for the contribution sought to be made by the district here.

In carrying out its purposes and in expending its funds, a district, such as the one involved here, is limited to the doing of only those things which are expressly authorized or which may be clearly implied from the statutes governing its actions.

The purposes for which levee improvement districts are created are set out in Article 7972, as

"... constructing and maintaining levees and other improvements on, along and contiguous to rivers, creeks, and streams, for the purpose of reclaiming lands from overflow from such streams, for the purpose

of the control and distribution of the waters of rivers and streams by straightening and otherwise improving the same, and for the proper drainage and other improvement of such lands,"

The powers granted in order to fulfill these purposes are described in Article 7980 as follows:

"Levee improvement districts created under this Act or entitled to the benefits of its provisions, subject to the supervision and direction of the State Reclamation Engineer, or other superior authority created by law, and subject to the limitations in this Act contained, shall have full power and authority to build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements within their district necessary or proper to fully accomplish any plan of reclamation lawfully adopted for or on behalf of such district, and may make all necessary and proper contracts, and employ all persons and means necessary or proper to that end;"

Levee improvement districts are authorized to act in conjunction with others by Article 7986, which provides as follows:

"Levee improvement districts shall have authority to act jointly with each other, with cities and towns and other political subdivisions of the State, with other states, and with the Government of the United States in the performance of any of the things permitted by this Act; such joint acts to be done upon such terms as may be agreed upon by their supervisors, subject to the approval of the State Reclamation Engineer."

The maintenance fund of such districts may be expended as provided in Article 8013, which states:

". . . The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the levees

and other improvements in the district,
and for no other purposes, except as may
be herein otherwise provided. . . ."

The above quoted articles must be looked to in order to authorize the contribution in question since nothing is to be found in the 1925 Act, as amended, which would otherwise authorize the contribution involved here. We find nothing in these articles, either express or implied, which would authorize the contribution, nor do we find in the 1909 Act, the Act under which the district in question was created, any such authorization.

It is provided in Article 7980, V. C. S., that only the construction and maintenance of those improvements are authorized which are necessary and proper to accomplish the district's "plan of reclamation" which has been adopted and approved as provided in Article 7990, and by Article 8027 and 8028 it is declared to be unlawful for the district to construct or maintain any levee or other improvement without first adopting such a plan and having the same approved by the State Reclamation Engineer, whose duties by Article 5421h are now exercised by the Commissioner of the General Land Office. In *Nathan vs. Rockwell County Levee Improvement District No. 1* (T.C.A. 1929) 17 S. W. (2) 841, these statutes were construed; and it was held that a levee improvement district may carry out only those works authorized by its "plan of reclamation" and suffers no liability for damage caused by a work unauthorized by such plan. We assume from your statement of facts that the project which the contribution anticipates will be a project which, presently at least, is not covered by the district's plan of reclamation. If the district is unable to undertake the project under its present plan of reclamation, it must follow that it is unable to contribute its funds to such a project.

An agency of the State cannot delegate to others jurisdiction, duty or authority vested in it by statute. We feel that the contribution under the facts given will have this effect and base our opinion upon this additional consideration.

In rendering this opinion, we recognize the district's authority to undertake upon its own initiative or in conjunction with the political subdivisions enumerated in Article 7986, or through contributions by citizens or others to it, and after proper approval of

plan, the work which the contribution here in question anticipates.

A situation more or less analogous to that which confronts the district here was involved in Galveston County v. Gresham (OCA, 1920) 220 S. W. 560, writ refused. A reading of that case may suggest to the district a solution to the problem which confronts it.


SUMMARY

(1) A levee improvement district may not contribute from its reserve maintenance fund to a citizens' committee, over which it has no control, formed for the purpose of engaging engineers and developing a plan for cleaning a stream to facilitate drainage within the district, such committee to contact the federal government for appropriation and aid in the project.

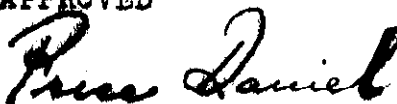
(2) A levee improvement district may accept donations from citizens or from any other source and expend its own funds to developing a plan approved by the State Reclamation Engineer.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
H. D. Pruett, Jr.
Assistant

APPROVED


ATTORNEY GENERAL

HDP:bt:jrb